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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 534

THE J. D. RICHARDSON COMPANY, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Customs Court (R. 44-54) is reported in 18 Cust. Ct. 109. The opinion of the United States Court of Customs and Patent Appeals (R. 56-60) is reported as C.A.D. 390, 83 Treas. Dec. 32, Advance Pamphlet No. 51 (December 16, 1948).

JURISDICTION

The judgment of the United States Court of Customs and Patent Appeals was entered on No-

vember 2, 1948 (R. 61). The petition for a writ of certiorari was filed January 29, 1949. The jurisdiction of this Court is invoked under 28 U.S.C. 1256.

QUESTION PRESENTED

Do the flanging operations performed in Canada on certain American-made steel bands constitute "alterations" of those articles within the meaning of that term as used in Section 201, Paragraph 1615(g) of the Tariff Act of 1930, as amended, so as to make them dutiable, upon their return to the United States, only on the value of the work performed thereon in Canada?

STATUTE INVOLVED

The pertinent parts of the Tariff Act of 1930, as amended (46 Stat. 590, 52 Stat. 1077; 19 U.S.C. 1001, 1201, Paragraphs 372 and 1615(g)), are set forth in the Appendix, *infra*, p. 10.

STATEMENT

The Kelsey-Hayes Wheel Co. of Detroit, Michigan, manufacturers of tank idler wheels to be used on the T-26, also known as the General Pershing Tank, for the United States Army Ordnance Department, shipped approximately 17,000 metal bands to its plant in Windsor, Canada, for the purpose of having a flange turned on each of such bands (R. 44). These bands or rims were designed, after being flanged, to be component parts of tank wheels, the flange being necessary for the purposes of

strengthening the wheel assembly and protecting the rubber tire affixed to the rim (R. 39). The flanged rims were required by the specifications placed in the tank contract by the Army Ordnance Department (R. 47). Upon the return of the flanged rims to the United States, the Collector of Customs at the port of Detroit assessed the said rims with duty at 27½ per centum ad valorem as parts of machines, not specially provided for, under Paragraph 372 of the Tariff Act of 1930, *infra*, p. 10, on the entire value thereof (R. 10).

The wheel company, through its agent, petitioner herein, filed a protest with the Collector under Section 514 of the Tariff Act (46 Stat. 590, 734; 19 U.S.C. 1514), claiming that duty should have been taken only on the value of the flanging operations performed in Canada as provided in Paragraph 1615(g), of the Tariff Act of 1930, as amended, *infra,* p. 10, on the ground that such operations constituted "alterations" of the so-called rims within the meaning of that term as used in that paragraph of the Tariff Act (R. 4-5). The decision of the collector having been affirmed, the matter was duly transmitted to the Customs Court for decision (R. 6-7). At the trial of the case it was agreed that all of the regulations attending the entry of merchandise exported for repairs and alterations had been complied with (R. 49), and there was no dispute between the parties with respect to the classification of the "flanged" rims as

parts of machines or as to the rate of duty to be assessed (R. 44).

The Customs Court found that the articles as exported to Canada were rims of wheels, and that as returned to the United States they were the identical rims which had been exported, the flanging process merely having changed their condition (R. 52). On these findings, the Customs Court sustained the protest, holding in substance that the flanging operations performed in Canada were "alterations" within the meaning of Paragraph 1615(g), and rendered judgment that duty be taken only on the value of the flanging operations (R. 53-55).

On appeal, the court below reversed the decision of the Customs Court, taking the view that the metal bands when exported to Canada were not parts of machines, but were merely manufactures of metal at that time; that in their then condition they required manufacturing processes to complete them as "flanged" rims for their intended use; and that Congress did not intend by the use of the term "alterations" in Paragraph 1615(g) that uncompleted articles such as those involved here could be exported to a foreign country and there manufactured into completed articles, and then, upon their return to the United States be subject to duty only on the so-called "alterations." Accordingly, the court below held that the flanging operations performed in Canada were not "altera-

tions" within the meaning of Paragraph 1615(g), and thereupon sustained the action of the Collector of Customs in assessing duty at the rate of 27½ per centum ad valorem on the entire value of the articles (R. 58-60).

ARGUMENT

Petitioner's sole contention is that the metal bands when exported to Canada were parts of machines within the purview of Paragraph 372 of the Tariff Act, *infra*, p. 10, and that the manufacturing processes which took place in Canada were, therefore, "alterations" of the completed articles within the meaning of that term as used in Paragraph 1615(g) of the said Act, *infra*, p. 10 (Pet. 7-8).

The trial court agreed with petitioner's contention, and was of the opinion that the metal bands were completed rims when exported; that the flanging operation performed in Canada was merely a change in the completed article; and that the flanging did therefore constitute "alterations" of the completed articles (R. 44-54).

The appellate court reversed the decision of the trial court on the ground that the metal bands when exported had not yet reached the stage of manufacture where they had become completed parts of machines, but that they were, at the time of exportation, merely manufactures of metal because they required the manufacturing processes which took place in Canada to complete them as "flanged"

rims for their intended use (R. 58). These manufacturing processes, said the court, were necessary for the practical use of the metal bands and to conform to the specifications of the Ordnance Department that the rims be flanged for the purpose of strengthening them (R. 57). After thus analyzing the facts, the appellate court reached the conclusion that Congress did not intend the term "alterations" appearing in Paragraph 1615(g) to include the work done abroad on articles such as these, which have been exported in an unfinished condition and returned to the United States after having been completed in the foreign country (R. 59).

It will be observed from the above that the difference of opinion between the trial court and the appellate court arose solely from their opposing views on the facts peculiar to the case at bar. Thus, the trial court took the position that the metal bands when exported were completed rims and that the flanging process was an alteration of a completed article rather than a further manufacture of an uncompleted article. On the other hand, the appellate court was of the opinion that the metal bands were not completed parts of machines (or rims) when they were exported and that the flanging process performed in Canada could not, for that reason, be an alteration of a completed article. Consequently, it was of the view that the flanging operation was a further manufacture necessary to complete the article rather than an

alteration of the article after it had been completed. Apparently, both the trial and the appellate courts were in agreement that under the common meaning of the word "alteration" an article must exist in a completed condition before it can become the subject of an alteration (R. 50, 53, 60), and neither took the position that the term "alterations" was used in Paragraph 1615(g) in other than its common meaning. In the circumstances it is clear that the decision of the court below was based entirely on facts peculiar to the case at bar, and that no disputed questions of law were reached. Consequently, this case presents no disputed question of law for review by this Court.

The court below was clearly correct in its analysis of the facts, and in its application of those facts to the statute. There is no evidence in the record that the metal bands in their condition as exported could have been used as parts of machines other than the T-26 tanks, and it was not argued that they had any other use (R. 57). And one of petitioner's witnesses testified that the metal bands in their exported condition would not have been accepted by the Army Ordnance Department as a compliance with the contract specifications governing rims for the T-26 tank (R. 24, 26). This was ample evidence to sustain the conclusion of the court below that the metal bands or rims were not completed parts of machines at the time they were exported, and that not having reached the stage of

manufacture where they could be called parts of machines for tariff purposes, they were, at the time of exportation, merely manufactures of metal. Petitioner does not contend that Congress intended the term "alterations," as used in Paragraph 1615(g), to have a connotation different from its common meaning, or that an article may, within the common meaning of the term "alterations" become the subject of an alteration before it has come into existence as such article. Here, it was necessary that the metal bands become completed rims before they could become completed parts of machines. They were not completed rims when exported and were not, therefore, parts of machines when they left the United States, but were mere manufactures of metal. Consequently, the flanging operation was a manufacturing process which changed the bands from manufactures of metal into completed rims or parts of machines. Thus, the work performed in Canada destroyed the identity of the articles commonly known as metal bands, and created new ones commonly known as rims and for tariff purposes known as "parts of machines." Webster's New International Dictionary defines the word "alter": "* * * to change in one or more respects, but not entirely; to make (a thing) different without changing it into something else * * *." This definition plainly implies the previous existence of the thing altered, and it expressly precludes the destruc-

tion of the identity of the thing changed. We submit, therefore, that the conclusion reached by the court below is not in conflict with the common meaning of the term "alterations", and is not, therefore, at variance with the meaning of that word as used in Paragraph 1615(a), *infra*, p. 10.

CONCLUSION

The decision of the court below is correct and the case presents no substantial question of law for review. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MARCH 1949.

APPENDIX

The pertinent parts of the Tariff Act of 1930, as amended (46 Stat. 590, 52 Stat. 1077; 19 U.S.C. 1001, 1201), read as follows:

Sec. 1, Par. 372. * * * all other machines, finished or unfinished, not specially provided for, 27½ per centum ad valorem: *Provided,* That parts, not specially provided for, wholly or in chief value of metal * * * shall be dutiable at the same rate of duty as the articles of which they are parts: * * *.

Sec. 201, Par. 1615(g). Any article exported from the United States for repairs or alterations may be returned upon the payment of a duty upon the value of the repairs or alterations at the rate or rates which would apply to the article itself in its repaired or altered condition if not within the purview of this subparagraph.

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